

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Criteria to Authorize an Increase in the Rate of Return Allowed an Electrical Corporation on its Electric Plant Due to Sustainable Land and Resource Management Practices pursuant to Pub. Util. Code 454.3.

Rulemaking 03-02-____
(Filed February, 2003)

ORDER INSTITUTING RULEMAKING**I. Summary**

In this order instituting rulemaking (OIR), the Commission will develop criteria under which it will exercise the authority granted to it by Pub. Util. Code § 454.3.¹ Under the mandate of § 454.3, the Commission can authorize an increase in the rate of return attributable to an electrical corporation based on certain environmental criteria. Below is a description of the aspects of this Code section and their potential application to management of hydroelectric assets, redevelopment of utility “brownfields,” and development of clean distributed generation at existing electric facilities. The overall objective of this rulemaking is to develop applications of Pub. Util. Code § 454.3 that will encourage the respondent electrical corporations, specifically Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE), to undertake sustainable land and resource management in the context of 1) increasing utility-owned generation, including

¹ All statutory references are to the Pub. Util. Code unless otherwise noted.

baseload, peaking and distributed, and 2) going-forward operations of retained generation and assets booked to generation ratebase.

II. Code Provisions and Potential Applications

Code § 454.3 reads as follows:

“The Commission may, after a hearing, approve an increase of from one-half of 1 percent to 1 percent in the rate of return otherwise allowed an electrical corporation on its electric plant for investment by the corporation in facilities meeting one of the following requirements:

“(a) The facility is designed to generate electricity from a renewable resource, including, but not limited to, solar energy, geothermal steam, wind, and hydroelectric power at new or existing dams; the facility is subject to Resource Agency review of its environmental impacts and determination that the facility is environmentally acceptable; its capital costs, when added to its costs of operation and maintenance, result in a cost of electricity generated over the useful life of the facility less than that of electricity generated by existing facilities utilizing nuclear power or fossil fuel; and the facility is used an useful.”

Potential Application: Investor-Owned Utility (IOU) Hydroelectric Assets. IOU hydroelectric assets include a substantial amount of protected natural land and affect most major river flows in California. As part of the PG&E’s and SCE’s applications to value these assets and the associated environmental review work the Commission has undertaken, we received substantial testimony and proposals regarding these assets and their historic management. Under § 454.3, the Commission could potentially give more explicit direction to the utilities to report on their practices in managing these resources, and could incent the IOUs to take specific management steps in order to better preserve and protect these lands and resources. For example, the Commission could direct the IOUs to

regularly file a report documenting steps taken to preserve these natural land and water endowments, taking an inventory of habitats and native species, and chronicling all impacts on these resources from activities related to electrical generation. From this base of information, the Commission could assess the applicability of financial incentives in directing changes to IOU stewardship practices. Opportunities to work cooperatively with state agencies responsible for land, timber, and water management could be better leveraged to combine regulatory strengths and responsibilities in collaboration with the IOUs. Further, hydroelectric re-licensing at Federal Energy Regulatory Commission could be streamlined were IOUs required to collect data on such issues as streamflow and resource impacts to support the re-licensing application.

Code § 454.3 continues:

“(b) The facility is capable of meeting the then applicable environmental pollution standards; its capital costs, when added to its costs of operation and maintenance, result in a cost of electricity generated over the useful life of facility less than that of electricity generated by existing facilities utilizing nuclear power or fossil fuel; and the facility is used an useful.”

Potential Application: IOU “Brownfield” Management. The Commission could initiate a process whereby the IOUs report on management of land presently used in the generation of electricity, broadly defined, as well as of land that has historically been involved in generation activity. This could potentially allow for the siting of new or repowered generation resources in a manner that minimizes the ecological impact of the state’s generation stock, and for the remediation of some of the state’s most polluted areas. The remediation of toxics at existing IOU facilities could potentially result in an increased rate of return for new generation that is subsequently constructed on the site.

Code § 454.3 continues:

“(c) The facility is experimental and is, in the determination of the Commission, reasonably designed to improve or perfect technology for the generation of electricity from renewable resources or to more efficiently utilize other resources in a manner which will decrease environmental pollution and lower the costs of electricity generated.”

Potential Application: Development of Distributed Generation (DG). IOUs could be encouraged to employ clean and renewable DG technologies at existing facilities, such as substations, to provide voltage support or as an alternative to expansion of the distribution system. As part of the process of determining the application of this provision, the IOUs should file an inventory of presently existing DG facilities in their service territory.

III. Directive to IOUs on Land and Water Resource Inventory

The development of this proceeding, and the task of environmental stewardship broadly, will be aided if we proactively seek an inventory of IOU-controlled land and water resources as they presently exist. As an initial matter, therefore, we hereby order the IOUs to submit an inventory of all natural resource holdings that could potentially correspond to the three categories defined above. The resources to be inventoried are the lands and waters subject to Commission rate regulation, also denoted ratebase lands and waters. Each inventory should contain:

1. A map of all such lands and waters owned or controlled by the IOU;
2. Parcel numbers;
3. A baseline inventory of the real property's current condition, including all of the following:
 - i. Descriptions of watershed, key vegetation classes, forest stand information, terrestrial and aquatic habitat types,

- federal or state listed threatened or endangered species, and water quality baseline conditions;
- ii. Descriptions of water courses contained within ratebase lands or directly affected by utility operations, including:
 - a. Hydrologic descriptors (watershed and flows);
 - b. Key aquatic habitats and endangered species habitats;
 - c. Water quality baseline conditions;
- iii. Descriptions of known, major cultural resource sites or management areas (this aspect of the IOU inventory may be filed under seal);
- iv. Descriptions of major recreation areas;
- v. Descriptions and the location of any known hazardous materials or facilities located upon, within, or beneath the property site; or discharging to the property site; or located or discharging within 500 feet of the property site.

IV. Preliminary Scoping Memo

This rulemaking will be conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure. As required by Rule 6(c)(2), this order includes a preliminary scoping memo as set forth below.

The respondents are PG&E, SDG&E, and SCE.

The issues to be considered in this proceeding are:

- 1) The criteria for environmental acceptability in managing IOU assets. Possible examples include:
 - a. Repowering to improve environmental performance
 - b. Management and appropriate sequestration of pollutants, wastes, effluents and other byproducts of electrical generation
 - c. Remediation of hazardous materials at IOU facilities
 - d. Management and restoration of habitat of applicable lands and waters
 - e. Management of streamflows to the benefit of species and habitats

- 2) Reporting parameters the Commission should employ to assess the quality of environmental stewardship at these facilities.
- 3) Could remediation of land presently without generation assets take place, with the ROR increase being attributable to a facility at another location?
- 4) What is the appropriate basis for assessing the capital Operation & Maintenance cost comparison?
- 5) How should local communities be involved in the site selection and remediation process?
- 6) What should be the criteria for assessing whether a facility is experimental or will otherwise fit the criteria of section 454.3(c)? Can other technologies, e.g., transmission upgrades, be considered in this context?

In addition to the potential applications of § 454.3 described above, the Commission may wish to explore applying the authority granted it in § 454.3 in the context of the new responsibility the Legislature and Governor have given it in § 454.5 and Article 16, commencing with § 399.11. The Commission, under the Renewable Portfolio Standard Program is required to increase, by 1% each year, the proportion of electricity consumed in the state that is generated from renewable sources, provided certain conditions are met.

Pursuant to Rule 6(c)(2), we preliminarily determine the category of this rulemaking proceeding to be quasi-legislative, as that term is defined in Rule 5(d).

At this time, and pending input from parties to this new rulemaking, we anticipate that this process may require a combination of workshops and legislative-style hearings, in addition to formal filing of party briefs. If and when the Commission has the opportunity to apply the criteria adopted in this rulemaking, evidentiary hearings will be appropriate. As noted above, we have received a large amount of data on several of these points already in the context

of other efforts, and we will determine the extent to which this information can and should be integrated into the record of this new proceeding. Party comments on the feasibility and merit of this approach are welcomed.

The assigned Commissioner will determine the timetable for this proceeding as soon as possible, through the scoping memo ruling after input from the parties at the prehearing conference (PHC). As a preliminary matter, the respondent utilities are directed to submit an initial version of the resource inventory described in Section III above within 90 days of issuance of this order, and interested parties are to submit initial responses to the questions posed in Section IV above within 45 days of issuance of this order.

Any person who objects to the preliminary categorization of this rulemaking, the need for hearings, or the issues raised in this preliminary scoping memo shall raise such objection(s) in comments to be filed ten days after the issuance of this order.

The assigned Commissioner and the assigned Administrative Law Judge may adjust the timetable as necessary during the course of the proceeding. We do not anticipate that this proceeding will require longer than 18 months to complete.

Following the PHC, the assigned Commissioner will issue a ruling that determines the category, need for hearing, and schedule for this rulemaking, and designates the principal hearing officer pursuant to Rules 6(c)(2) and 6.3. The assigned Commissioner's ruling as to the determination of category only may be appealed pursuant to the procedures set forth in Rule 6.4.

V. Parties and Service List

We will serve this OIR on the parties in the following proceedings: Application (A.) 99-09-053; A.99-12-024; and R.01-10-024. These proceedings have large service lists that should include all persons likely to be interested in

the procurement issues we are considering here. In addition, our Executive Director should cause the OIR to be served on the state Resources Agency, the state Environmental Protection Agency, the Governor's Office of Planning and Research, and the state Native American Heritage Commission (NAHC). We ask that the NAHC cause this OIR to be served on the state's federally recognized tribes.

Within 15 days from the mailing date of this order, any person or representative of an entity interested in monitoring or participating in this proceeding should send a letter to the Commission's Process Office and to the Public Advisor's Office, both of which are located at 505 Van Ness Avenue, San Francisco, California 94102, requesting that the person or representative's name be placed on the service list. The Process Office will thereafter create a new service list and the new service list will be posted on the Commission's web site, www.cpuc.ca.gov, as soon as is practicable. The assigned Commissioner, and the assigned ALJ acting with the assigned Commissioner's concurrence, will have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

In accordance with Commission practice, by entering an appearance at a hearing or by other appropriate means, an interested party or protestant gains "party" status. A party to a Commission proceeding has certain rights that non-parties (those in "state service" and "information only" service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period. Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents. When individuals write to the Process Office to request to be on the service list,

they should indicate if they wish to be an appearance, and if so, they should indicate how they intend to participate in the proceeding. Individuals who intend to maintain appearance or party status must appear at the PHC to confirm this.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Public Advisor's Office in Los Angeles at (213) 576-7056, or in San Francisco at (415) 703-2074, (866) 836-7875 (TTY – toll free) or (415) 703-5282 (TTY).

VI. Ex Parte Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rule 7(a)(4), until the assigned Commissioner has made an appealable determination of category as provided for in Rules 6(c)(2) and 6.4, ex parte communications will be permitted in accordance with Rule 7(d). Following the Commissioner's determination, the applicable ex parte communication and reporting requirements will depend on such determination, unless and until the Commission modifies the determination pursuant to Rule 6.4 or 6.5.

O R D E R

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to implement the provisions of Pub. Util. Code § 454.3.
2. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company, are made respondents to this proceeding.

3. The Executive Director shall cause this Order Instituting Rulemaking to be served on the respondents, the Executive Director of the California Energy Commission, the California Power Authority, the Native American Heritage Council, and on the parties to the following Commission proceedings: Application (A.) 99-09-053, A.99-12-024, and R.01-10-024.

4. Within 15 days from the mailing date of this order, any person or representative of an entity who is interested in monitoring or participating in this rulemaking should send a letter to the Commission's Process Office and to the Public Advisor's Office, both of which are located at 505 Van Ness Avenue, San Francisco, California 94102, asking that the person's or representative's name be placed on the service list for this proceeding.

5. After service of this order and receipt of the letters referred to in Ordering Paragraph 4, a new service list for the proceeding will be developed by the Process Office. The assigned Commissioner, and the assigned Administrative Law Judge by ruling with the assigned Commissioner's concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

6. The category of this rulemaking is preliminarily determined to be "quasi-legislative" as that term is defined in Rule 5(d) of the Commission's Rules of Practice and Procedure.

7. This proceeding is preliminarily determined to not require evidentiary hearings. If and when the Commission has the opportunity to apply the criteria adopted in this rulemaking, evidentiary hearings will be appropriate.

8. The assigned Commissioner will determine the timetable for this proceeding as soon as possible, through the scoping memo ruling after input from the parties at a prehearing conference. As a preliminary matter, the respondent utilities are directed to submit an initial version of the resource

inventory described in Section III above within 90 days of issuance of this order, and interested parties are to submit initial responses to the question posed in Section IV above within 45 days of issuance of this order. It is not anticipated that this proceeding will require longer than 18 months to complete.

9. Any person that objects to the preliminary categorization of this rulemaking, the need for hearings, or the proposed timetable shall raise any such objection in comments to be submitted within ten days of the issuance of this order.

This order is effective today.

Dated _____, at San Francisco, California.